NAIFA WISCONSIN

NATIONAL ASSOCIATION OF INSURANCE AND FINANCIAL ADVISORS – WISCONSIN

TESTIMONY IN SUPPORT OF SB-439

Senate Committee on Veterans & Military Affairs, Biotechnology, & Financial Institutions

January 20, 2010

Mark E. Miehe
Chartered Life Underwriter
Chartered Financial Consultant
President-Elect, NAIFA Wisconsin

Chair Sullivan and ladies and gentlemen of the Committee. My name is Mark Miehe and I am the President Elect of The National Association of Insurance and Financial Advisors in Wisconsin. I am also President of Midwest Financial Group, a financial planning practice based in Middleton that serves about 3,000 clients including individuals, families and small businesses. On behalf of the 1,500 professional members of NAIFA Wisconsin, my own clients and the people of Wisconsin who are working hard to maximize retirement savings, I strongly encourage you to fully federalize Wisconsin tax law regarding IRA and other retirement accounts.

NAIFA Wisconsin supports SB-439 as it will allow all savers in our state, not just some, to diversify the types of accounts they hold for their retirement saving. It is good public policy for the state to use its taxing authority to encourage our residents to do as much as is possible in each of their unique financial situations, to save for their own retirement. The more our citizens are allowed to focus on achieving this important financial goal, the less they will have to depend on government programs to support them.

Wisconsin's failure to incorporate the most current federal tax law will have adverse consequences for many whom a Roth conversion would make sense for and nearly all who are saving for retirement. With the constant litany of articles in the national media and the fact that even some tax advisors may not be aware of Wisconsin's failure to modernize these provisions, I predict it will result in penalties for many unless it is corrected.

Roth IRA Accounts are an important element in a retirement savings portfolio and they provide the average worker who works at an establishment without a company retirement plan to provide for his or her own retirement. The Roth conversion privilege will allow Wisconsin residents to plan like citizens in all other states.

However, I would like to draw your attention to an additional element of our tax law in this area that must be federalized. This pertains to the amount Wisconsin residents can contribute to their IRA, Roth IRA or their other retirement accounts such as 401(k) and 403(b)s and the income limits within which these contributions are allowed. On January 1st of 2011, Wisconsin law in this area will roll back to pre-2001 levels because of changes made in the federal Pension Protection Act that were not adopted in Wisconsin. For example:

- The maximum contribution to a traditional or Roth IRA will be $5,000 ($6,000 for individuals over age 50) for savers in other states. The maximum IRA contribution for savers in Wisconsin will be $2,000. This is a $4,000 detriment to Wisconsin workers saving for retirement.

- The maximum contribution to a 401(k), 403b and 457 plan will be $16,500 ($22,500 for workers age over age 50) for savers in other states. For a SIMPLE pension plan it will be $11,500 ($14,000) for savers in other states. In Wisconsin, without some action, these limits will all be reduced. For 401ks, the limit will be reduced to $10,000 with no catch-up provision for workers over age 50. This is a 56% reduction. That's $12,500 that a person living is Hudson will not be able to put in their 401k plan that their friend across the river in Stillwater will be able to save.

The reduction in allowable 403b and 457 contributions is nearly 65% from $22,500 to $8,000. Similarly, SIMPLE plan contribution limits would be reduced to only $6,000. Allowing this to happen would be a significant detriment to Wisconsin workers trying to save for retirement.

- In addition, failure to adopt certain provisions of the Pension Protection Act will mean that Wisconsin will no longer allow contributions to any existing Roth 401(k) and 403(b) plans. This freezes the ability to save for retirement of every worker in Wisconsin who has this type of retirement plan.

- Taxpayers who conform to federal law and contribute more than these reduced limits would be subject to a state penalty for excess contributions.

- The state of Wisconsin should not penalize Wisconsin workers who are trying to save enough for a secure retirement consistent with federal law.

- In addition to these reductions, failure to federalize in keeping with provisions of the Pension Protection Act will disallow many people from making any deductible contributions to their IRAs if their employer has a retirement plan. A married couple, filing jointly in this case would see their ability to get a tax deduction phased out beginning at $52,000 of adjusted gross income and completely lost when their income reaches $62,000.

<u>Can you imagine being a former GM worker in Janesville who lost your job? Then when you were finally able to find work at a plant in Rockford, you find out that you can only save half as much for retirement as your Illinois co-workers because you have a Wisconsin address?</u>

It is incumbent on the legislature to keep Wisconsin's tax treatment of retirement savings accounts up to date so that Wisconsin savers are not penalized for the same transactions and amounts that people in other states can accomplish penalty-free. To allow Wisconsin's tax law on retirement accounts to revert back to 2001 provisions is to send Wisconsin back into the stone age of retirement security for our citizens.

We urge you to broaden this bill to address account contribution limits. To pass only legislation enacting the Roth conversion provisions would resolve only a small part of the serious deficiency in Wisconsin retirement tax law.

I would be happy to answer any questions.

Taxation Law Section

State Bar of Wisconsin

Wisconsin Lawyers. Expert Advisers. Serving You.

To: Members of the Senate Committee on Veterans and Military Affairs, Biotechnology, and Financial Institutions

From: Taxation Law Section
State Bar of Wisconsin

Date: January 20, 2010

Re: Support for Senate Bill 439 – Adoption of IRS code

The Taxation Law Section of the State Bar of Wisconsin **strongly supports Senate Bill 439** relating to the adoption of the IRS code relating to IRA/Roth IRA conversions and Heroes Earnings Assistance and Tax Relief Act of 2008. We especially want to thank Senator Sullivan, Representative Molepske and others for their help in forwarding this legislation.

For many years, certain individuals have been eligible to convert a traditional IRA to a Roth IRA. Eligible individuals are those whose modified adjusted gross income for the year of conversion is $100,000 or less and, if married, file a joint return for the year of conversion. Wisconsin has regularly adopted this provision when it has adopted the definition of the Internal Revenue Code.

The Tax Increase Prevention and Reconciliation Act of 2005 ("TIPRA") eliminated the $100,000 modified AGI limit for Roth IRA conversions, effective on January 1, 2010. It also allows a taxpayer to report the gross income resulting from a 2010 conversion ratably on a taxpayer's 2011 and 2012 federal income tax return, unless the taxpayer elects otherwise.

Unfortunately, Wisconsin did not adopt the TIPRA provision eliminating the $100,000 modified AGI limit. In Wisconsin Tax Bulletin No. 164, the Wisconsin Department of Revenue published its position on how a Roth IRA conversion in 2010 by a taxpayer whose modified AGI is greater than $100,000 will be treated for Wisconsin purposes. The Department stated that the fair market value of the IRA on the date of the conversion will be taxed as ordinary income on the taxpayer's 2010 Wisconsin income tax return (i.e., no deferral to 2011 and 2012). More importantly, however, the Department stated that if the taxpayer is under age 59-1/2, the taxpayer will be subject to a 3.33% early distribution penalty under IRC Sec. 72(t). In addition, the taxpayer will be subject to a 2% penalty for an excess contribution to a Roth IRA under IRC Sec. 4973. The 2% penalty is imposed each and every year that the Roth IRA is in existence. For example, if the beneficiary of a Roth IRA is a grandchild and the Roth IRA continues for 50 years, the 2% Wisconsin penalty is imposed for each of the 50 years.

State Bar of Wisconsin
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The popular media has already begun to discuss the planning idea and many advisors have begun to counsel clients on the advantages of a Roth IRA conversion. It has been discussed at length in yearend tax planning articles and major nationwide financial planning companies have been advertising the switch in media campaigns. Many taxpayers and even experienced tax professionals are unaware that Wisconsin has not adopted the federal provisions, which could lead to large unplanned tax penalties if they unknowingly convert their IRA.

The decision to convert or not convert can be complicated for individual taxpayers. The potential large penalties and unintended consequences could have long lasting effects on Wisconsin and its taxpayers.

The Taxation Law Section urges your support of Senate Bill 439.

For additional information contact Cale Battles, Government Relations Coordinator, at (608) 250-6077 or cbattles@wisbar.org.

The State Bar of Wisconsin establishes and maintains sections for carrying on the work of the association, each within its proper field of study defined in its bylaws. Each section consists of members who voluntarily enroll in the section because of a special interest in the particular field of law to which the section is dedicated. Section positions are taken on behalf of the section only.

The views expressed on this issue have not been approved by the Board of Governors of the State Bar of Wisconsin and are not the views of the State Bar as a whole. These views are those of the Section alone.

Wisconsin Institute of
Certified Public Accountants

Date: **January 20, 2010**

To: Chairman Sullivan and Members of the Senate Committee on Veterans & Military Affairs, Biotechnology and Financial Institutions

From: **Raymond R. Petkovsek, CPA**
WICPA President

Re: Support SB 439

Testimony on Wisconsin and Federal Tax Law Differences Relating to Retirement Accounts for Wisconsin Residents in 2010 and Future Years

Introduction

Colleagues testifying with me today are:

Martin D. Verhelst, CPA
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Brian L. Anderson, CPA, JD
Member of the WICPA Taxation Committee
Member of the WICPA Public Policy Committee
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Currently, Federal and Wisconsin have dramatically different rules for annual retirement contribution limits and ROTH conversions. You have heard from many constituents and the financial industry about how the failure to adopt the federal tax laws, as they relate to retirement accounts, will drive taxpayers and businesses out of Wisconsin.

Our purpose today is simply to provide information to you on the issues, express concerns brought to us by our clients and answer questions regarding the varying tax treatment of retirement accounts for Wisconsin residents.

Background

Federal Public Law 109-222, Section 512, of the Tax Increase Prevention and Reconciliation Act of 2005 (TIPRA) repealed the $100,000 adjusted gross income limitation for conversion of traditional Individual Retirement Accounts (IRA) to a ROTH IRA in 2010 and allows payment of the income tax cost over two years.

Federal Public Law 109-280, Section 811 of the Pension Protection Act of 2006 (PPA) makes permanent the qualified retirement account provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) and also increased the amounts a taxpayer may contribute to IRAs and retirement plans.

Qualified retirement accounts affected by these laws include a Traditional IRA, ROTH-IRA, SIMPLE-IRA, SEP-IRA, 401(k), 403(b), 457 and profit sharing plans.

Wisconsin tax law is "federalized", which means it generally follows federal law with some modifications. To date, Wisconsin has not adopted the Federal tax laws mentioned above.

2010 ROTH Conversions

Federal Law – Allows any taxpayer, without any income limitation, to convert a qualified retirement account to a ROTH IRA. The conversion amount, less any cost basis, is taxable income in the year of conversion. For 2010 conversions only, the federal tax cost may be deferred. Half of the taxable conversion income and related tax are reported each year on the 2011 and 2012 tax returns. Alternatively, the taxpayer may opt out of the deferral provision and pay the full amount of tax in 2010. Most importantly, the conversion does not impose the federal penalties of 10% early withdrawal and 6% annual excess IRA funding.

Wisconsin Law – First, a taxpayer with modified adjusted gross income of more than $100,000 is not allowed to convert a qualified retirement account to a ROTH IRA. Second, if a conversion is made on the federal tax return, Wisconsin Tax Bulletin 164 – October 2009, Page 2, informs us that a **3.33% early distribution penalty** will be imposed on a taxpayer under age 59½ at the time of conversion. Third, a **2% excess IRA contribution penalty** will apply to all conversion amounts that exceed the annual ROTH IRA contribution limit. Finally, a **2% excess IRA funding penalty** will be assessed ***every year*** in the future as long as there is an excess amount in the ROTH IRA account.

Commentary – Taxpayers, investors and advisors have been planning many years for this opportunity. Whether it makes economic sense for a taxpayer to convert to a ROTH must be determined by their unique circumstances. It is likely that a significant amount of taxable income will be generated in 2010 by the conversions. Moreover, given the uncertainty of tax rates beyond 2010, it appears to be most advantageous to convert in 2010, if at all, considering the attractive two-year tax deferral.

If Wisconsin does not immediately adopt the federal law and decides to impose the multiple penalties, this is what we believe the reaction by Wisconsin citizens will be:

1. Taxpayers will be outraged by the harsh penalties invoked by Wisconsin, especially the 2% excess IRA funding penalty year after year. A significant amount of "ill will" on the part of taxpayers and voters is likely to be generated.

2. Wisconsin is the only state that has not adopted the federal laws related to this issue. Many of the potential conversion taxpayers are at or near retirement age. This may lead some to relocate to a more tax favorable state, resulting in a permanent loss of future tax revenue from these residents.

3. Generally, a conversion is beneficial if the tax rate at the time of conversion is lower than the anticipated future tax rate when the funds are withdrawn. It is unlikely a conversion will make financial sense when the additional state penalties compound the tax cost. Therefore, Wisconsin taxpayers are not likely to convert to a ROTH IRA and the state will lose this income tax generating opportunity.

4. No IRA conversions mean a lost opportunity for Wisconsin to collect income tax revenue at a time when it is badly needed for state operations.

Retirement Contribution Limits After 2010

On January 1, 2011, Wisconsin annual contribution limits for qualified retirement accounts will revert to limits in effect in 2000 (yes, 11 years ago). Besides much lower regular contribution limits, Wisconsin will not allow the additional "catch-up" contribution for taxpayers age 50 or more. Table 1 briefly summarizes some of these contribution differences.

Table 1: Qualified Retirement Accounts – Annual Contribution Limits

Type of Account	**Federal**	**Wisconsin**	**Difference**
Type of Contribution ->	Regular / Catch-up	Regular / Catch-up	Annual
Traditional & ROTH IRAs	$ 5,000 / $1,000	$ 2,000 / none	$ 4,000
SIMPLE-IRA	$11,500 / $2,500	$ 6,000 / none	$ 8,000
401(k), 403(b), 457, SAR-SEP	$16,500 / $5,500	$10,500 / none	$11,500

Another issue, that has escaped mention thus far, is the income phase-outs that restrict who may contribute to a retirement account, if the taxpayer or spouse actively participates in an employer sponsored retirement plan. Table 2 shows the adjusted gross income (AGI) phase-out range differences that take effect January 1, 2011.

Table 2: Traditional IRA Deduction - AGI Phase-out Range

	Federal	**Wisconsin**	**Difference**
Unmarried – Active Participant	$ 56,000 - $ 66,000	$32,000 - $42,000	$24,000
Married Filing Joint – Spouse Active Participant	$ 89,000 - $109,000	$52,000 - $62,000	$37,000 – $47,000

The following is an **example** of how the tax law differences will affect a Wisconsin resident:

In 2011, a Wisconsin married couple, both age 58, earn a combined income of $85,000. One spouse contributes $12,000 to her employer sponsored 401(k) retirement plan.

Federal - They may contribute up to an additional $6,000 each to a deductible IRA. Their total Federal deductible retirement investment is $24,000.

Wisconsin - Spouse has exceeded the annual 401(k) limit by $1,500. This amount will be added back to income and subject to 6.5% income tax plus 2.0% excess funding penalty. In addition, their combined income exceeds the $62,000 phase-out limit, which disqualifies them from making any deductible IRA contributions. Their total Wisconsin deductible retirement investment is only $10,500. By the way, the 2.0% excess funding penalty will be payable every year in the future as long as the 401(k) is overfunded.

The contribution limit variances will affect the vast majority of Wisconsin residents who save for retirement. We firmly believe this issue will have the most significant negative impact on taxpayers.

Problems facing Wisconsin residents, if the federal laws are not adopted immediately:

1. Maximizing retirement contributions at the federal level will eliminate annual contribution deductions up to $11,500 for each resident. This translates to additional taxes paid by Wisconsin residents.

2. In addition, Wisconsin will impose penalties up to 5.33% in the year of conversion and 2% every year thereafter on taxpayers with overfunded retirement accounts.

3. Retirement accounts will have a different "tax basis" for federal and Wisconsin. This requires two basis-tracking methods that must be maintained for the resident's lifetime.

4. The differences will add to already extensive lists of modifications and adjustments to Wisconsin tax returns on Schedule I and Form 1 (see attached). This adds another level of unnecessary complexity in tax preparation for Wisconsin citizens.

5. It may be an administrative hurdle for the state to track and enforce the 2% excess funding penalty in future years. For the most part, the government depends on the taxpayer to report excess contributions, calculate and pay the annual penalty with their tax return. Given the complexity of annual calculations required to determine if their account is overfunded, a taxpayer may decide to ignore the penalty and take their chances the state will not audit their return.

6. If a Wisconsin resident only makes retirement contributions at the state limits, their federal income tax cost will increase up to 35% of the contribution limit difference. That may be sufficient incentive to cause border residents to move a few miles to a neighboring state and save up to $4,000 federal taxes every year.

7. Creates additional work for tax preparers, financial advisors, estate planners, investment fund reporting, etc. to perform the many calculations needed every year to comply with different tax regulations. The associated fees will be passed to and become an additional financial burden on the Wisconsin resident taxpayer.

Recommendations

1. During the income tax filing season between now and April 15, Wisconsin residents are becoming acutely aware of the different tax treatments for ROTH conversions and retirement contribution limits. Confusion, dismay, disgust and anger are just a few of the reactions I can mention publicly.

2. All states, except Wisconsin, have adopted the current federal tax treatment on ROTH conversions and future retirement contribution limits. Wisconsin taxpayers deserve the same consideration.

3. Full adoption of current federal tax laws on retirement accounts should be passed and signed into law by Governor Doyle before the current legislative session adjourns, **retroactive to January 1, 2010**.

My colleagues and I are available anytime for your questions and comments. Thank you for listening to us on behalf of all Wisconsin residents struggling to save for a better and self-sustaining retirement.

Respectfully submitted,

Ray Petkovsek, CPA

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WICPA President

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Attachments: Wisconsin Form 1 Modifications
Wisconsin Schedule I Adjustments

Wisconsin

Form 1 Lines 4 and 11

Additions and Subtractions Statement

Attach to Wisconsin Form 1

2009

Statement ______

Name: Every Wisconsin Taxpayer

Social Security Number: ______

Other Additions (Form 1, line 4)

Code	Description	Amount
01	Farm Losses	
02	Federal Net Operating Loss Carryover	
03	Income (Lump Sum Distributions) Reported on Federal Form 4972	
04	Farmland Preservation Credit and Farmland Tax Relief Credit	
05	Development Zones Credit and Technology Zone Credit	
06	Excess Distribution Form a Passive Foreign Investment Company	
07	Enterprise Zone Jobs Credit	
08	Dairy and Livestock Farm Investment Credit	
09	Dairy Manufacturing Facility Investment Credit	
10	Internet Equipment Credit	
11	Film Production Company Investment Credit	
12	Film Production Services Credit	
13	Manufacturing Investment Credit	
14	Ethanol and Biodiesel Fuel Pump Credit	
15	Interest and Rental Expenses Paid to Related Entities	
16	Amounts Not Deductible for Wisconsin	
17	Economic Development Tax Credit	
18	Meat Processing Facility Investment Credit	
19	Dairy Cooperative Credit	
51	Tax Option (S) Corporation Adjustment	
52	Your Share of Partnership, Trust, or Estate Adjustments	
53	Differences in Federal and Wisconsin Basis of Assets	
54	Differences in Federal and Wisconsin Basis of Partnership Interest	
55	Differences in Federal and Wisconsin Reporting Marital Property (Community) Income	
	Total	

Other Subtractions (Form 1, line 11)

Code	Description	Amount
01	Medical Care Insurance	
02	Long-Term Care Insurance	
03	Tuition and Fee Expenses	
04	Military and Uniformed Services Retirement Benefits	
05	Local and State Retirement Benefits	
06	Federal Retirement Benefits	
07	Railroad Retirement Benefits, Railroad Unemployment Ins., and Sickness Benefits	
08	Adoption Expenses	
09	Recoveries of Federal Itemized Deductions	
10	Wisconsin Net Operating Loss Carryforward	
11	Native Americans	
12	Amounts Not Taxable by Wisconsin	
13	Farm Loss Carryover	
14	Contributions to a Wisconsin State-Sponsored College Savings Program	
15	Distributions from Wisconsin State-Sponsored College Savings and Tuition Programs	
16	Disability Income Exclusion	
17	Sale of Business Assets, or Assets Used in Farming, to a Related Person	
18	Repayment of Income Previously Taxed	
19	Human Organ Donation	
20	Reserve or National Guard Members .... Spouse . ► ______ Taxpayer . ► ______	
21	Interest and Rental Expenses Paid to Related Entities	
22	Recapture of Development Zones Investment Credit	
23	Legislator's Per Diem	
24	ATV Corridors	
25	Interest and Rental Payments Reported as Income by a Related Entity	
26	Retirement Income Exclusion	
51	Tax Option (S) Corporation Adjustment	
52	Your Share of Partnership, Trust, or Estate Adjustments	
53	Differences in Federal and Wisconsin Basis of Assets	
54	Differences in Federal and Wisconsin Basis of Partnership Interest	
55	Differences in Federal and Wisconsin Reporting Marital Property (Community) Income	
	Total	

SCHEDULE **I**

Wisconsin
Department of Revenue

ADJUSTMENTS TO CONVERT 2009 FEDERAL ADJUSTED GROSS INCOME AND ITEMIZED DEDUCTIONS TO THE AMOUNTS ALLOWABLE FOR WISCONSIN

2009

◆ **Enclose with Wisconsin Form 1 or Form 1NPR** ◆

Name(s) shown on Form 1 or Form 1NPR	Your social security number
Every Wisconsin Taxpayer	

PART I –FEDERAL ADJUSTED GROSS INCOME

(Read instructions before completing Schedule I)

1 Fill in your 2009 federal adjusted gross income from line 37, Form 1040 (line 21, Form 1040A) .... 1 ______

2 Capital gains and losses (federal Schedule D)

a Fill in any loss claimed on line 13, Form 1040, as a positive amount .... 2a ______

b Fill in any gain reported on line 13, Form 1040 .... 2b ______

c Fill in revised capital gain or (loss) from line 13 of revised Form 1040 (attach revised Schedule D and any accompanying forms and schedules) .... 2c ______

d Combine lines 2a, 2b, and 2c – indicate a loss by parentheses .... 2d ______

3 Supplemental schedule of gains or losses (federal Forms 4797 and 4684)

a Fill in any loss claimed on line 14, Form 1040, as a positive amount .... 3a ______

b Fill in any gain reported on line 14, Form 1040 .... 3b ______

c Fill in revised gain or (loss) from line 14 of revised Form 1040 (attach revised Form 4797, Form 4684, and any accompanying forms and schedules) .... 3c ______

d Combine lines 3a, 3b, and 3c – indicate a loss by parentheses .... 3d ______

4 Combine lines 1, 2d, and 3d .... 4 ______

5 Other adjustments:

	Description	COLUMN I Amount per 2009 federal return	COLUMN II Amount determined under IRC in effect for Wisconsin	COLUMN III Difference (see line 5 instructions)
a				
b				
c				
d				
e				
f				
g				
h				

i Total difference (combine amounts in Column III) .... 5i ______

6 Federal adjusted gross income as computed under the Internal Revenue Code in effect for Wisconsin (combine lines 4 and 5i). Fill in here and on line 1 of Wisconsin Form 1 or line 33 of Form 1NPR. (Note: The above figures must also be used to complete Columns A and B for each of the lines 1 through 31 of Form 1NPR.) .... 6 ______

PART II—ITEMIZED DEDUCTIONS

(Complete this part only for those federal itemized deductions which may be used in computing the Wisconsin itemized deduction credit.)

Who must complete Part II:

This part should be completed only by individuals claiming the Wisconsin itemized deduction credit. Whenever adjustments have been made in Part I, federal itemized deductions which are based on federal adjusted gross income are affected. Part II must be completed to report the difference in the amount of the deduction based on the revised federal adjusted gross income. Part II must also be completed whenever specific items require adjustment.

7 Adjustments:

Description	Column I Amount per 2009 federal return	Column II Amount determined under IRC in effect for Wisconsin
a Medical expense		
b Contributions		
c Interest		

The amounts in Column II should be used to compute the Wisconsin itemized deduction credit (Schedule 1 of Form 1 or Form 1NPR).

DO NOT FILE - search "updating forms" for Help

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MEMBER: National Association of Enrolled Agents
National Society of Tax Professionals
Wisconsin Society of Enrolled Agents

January 20, 2010

My name is Joel Guthmann and I am an Enrolled Agent. Enrolled Agents are licensed by the Internal Revenue Service to represent taxpayers before the IRS. In addition to representing taxpayers, I have been preparing individual and small business tax returns since 1976. I am the Immediate Past President of the Wisconsin Society of Enrolled Agents, though I am speaking here today for my clients and myself, not the Wisconsin Society of Enrolled Agents.

I am President of Guthmann Tax Services, Inc. Our primary office is located in Wauwatosa, Wisconsin, near the Milwaukee Zoo. I prepare approximately 1000 income tax returns each year. My clients range in income from Homestead Credit and Earned Income Credit qualifiers to a handful whose income exceeds $1,000,000. Some of my clients whose income is less than $100,000 have been taking advantage of the opportunity to convert Traditional IRAs to Roth IRAs for the last few years. These are people that are long-term savers, who wish to pay taxes now to gain tax-free growth on their retirement savings.

As of January 1, 2010, Wisconsin is the only place in the United States that limits the opportunity to convert Traditional IRAs to Roth IRAs. TIPRA (the Tax Increase Prevention & Reconciliation Act of 2005) permanently allows taxpayers to convert Traditional IRAs to Roth IRAs, regardless of the amount of Adjusted Gross Income (AGI). This federal law, passed in 2005, has an additional sweetener to encourage taxpayers to access this conversion right in 2010. If a taxpayer converts from Traditional IRA to Roth IRA in 2010, TIPRA provides that half of the conversion amount is taxable on the 2011 income tax return and half of the conversion amount is taxable on the 2012 income tax return. Taxpayers have the right to elect to have the entire amount taxable in 2010, but this is an affirmative election. The federal government expects that this section of TIPRA will generate taxes much earlier than otherwise would occur, since the best candidates for the conversion would not probably end tax deferral for more than a decade, perhaps substantially longer.

It is incredible that the Wisconsin Fiscal Bureau came to the conclusion that this provision would decrease tax revenue for the years 2010-2012 if Wisconsin were to adopt this federal provision enacted five years ago. It is my strong belief that very few of the taxpayers who would take advantage of the TIPRA provision, would do so as a Wisconsin resident under Wisconsin's current treatment. The Department of Revenue has issued their position that under current Wisconsin law, taxpayers with incomes greater than $100,000 that convert from Traditional IRA to Roth IRA will subject themselves to two possible penalties. First, taxpayers under the age of 59½ would face a one-time 3.33% penalty for making an early withdrawal from their Traditional IRA. Second, taxpayers of all ages would face an <u>annual</u> penalty of 2% of the conversion amount (until the conversion amount plus earnings was removed from the Roth IRA).

Why would anyone knowingly subject themselves to this treatment when every other jurisdiction in this country does not punish taxpayers taking advantage of this newly available federal provision in the tax code? Wisconsin already allows taxpayers with AGIs under $100,000 to covert without penalty. Wisconsin's failure to adopt this change unfortunately creates another incentive for people to move from Wisconsin, particularly people currently paying substantial Wisconsin income tax. Only Wisconsin currently penalizes taxpayers for taking advantage of Section 512 of Public Law 109-222.
Why wouldn't these taxpayers with AGIs greater than $100,000 choose either not to convert, to wait until their income dropped below $100,000, or simply move out of Wisconsin?

Senate Bill 439 addresses this problem directly. Section 3.71.01(6), lines 1, 2, 3, 4, 14, & 15 removes the Wisconsin prohibition to access the TIPRA provision that was passed by Congress in 2005. **The one provision that seems to be missing is retroactivity back to January 1, 2010. Please modify this bill to protect taxpayers who were not aware that Wisconsin had not federalized their treatment of Roth IRA conversions.**

I urge you to quickly endorse Senate Bill 439 and get this bill out of committee and onto the floors of the Senate and Assembly, where it can be approved and sent to the Governor's office for signing as soon as possible. My clients are waiting for Wisconsin to adopt Section 512 of Public Law 109-222 to do their conversions. My wife and I personally intend to convert our Traditional IRAs to Roth IRAs as soon as you make it possible.

Thank you,

EA

Joel Guthmann, EA
President